

# **EXHIBIT 23**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

JAMES HAYDEN,

Plaintiff,

v.

2K GAMES, INC. et al.,

Defendants.

CASE NO. 1:17-cv-02635-CAB

JUDGE CHRISTOPHER A. BOYKO

**DEFENDANT TAKE-TWO  
INTERACTIVE SOFTWARE INC.'S  
SECOND AMENDED OBJECTIONS  
AND RESPONSES TO PLAINTIFF  
JAMES HAYDEN'S FIRST SET OF  
INTERROGATORIES**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Defendant Take-Two Interactive Software, Inc. ("Take-Two"), by and through their undersigned counsel, hereby amend their responses to Plaintiff James Hayden's ("Hayden" or "Plaintiff") Interrogatories, served on May 2, 2019 (the "First Set of Interrogatories" and each individually, an "Interrogatory") in the above-captioned action ("Litigation") as follows:

depositions, or any other means of obtaining discovery in this Litigation that is more convenient, efficient, practical, and less burdensome.

Subject to, as limited by, and without waiver of the foregoing objections, Take-Two responds as follows: Jeff Thomas, Executive Vice President, Product Development, Producing/Management, is the person most knowledgeable with respect to the design and development of *NBA 2K16*, *NBA 2K17*, *NBA 2K18*, *NBA 2K19*, *2K20*, and *NBA 2K Mobile* from at least 2013 to the present. Jason Argent is the person most knowledgeable with respect to the marketing, distribution, and sales of *NBA 2K16*, *NBA 2K17*, *NBA 2K18*, *NBA 2K19*, *NBA 2K20*, and *NBA 2K Mobile*. Mr. Argent is Senior Vice President, Basketball Operations, Marketing. Mr. Argent was Vice President, Marketing for 2K Sports at Take-Two Interactive Software, Inc. from May 2008 to December 2012. Take-Two's discovery efforts in this Litigation are ongoing, and Take-Two reserves the right to modify and/or supplement this response in light of facts learned during discovery.

**INTERROGATORY NO. 3:**

Identify the first NBA 2K Game (including the year of its release) that depicted tattoos on players and the first NBA 2K Game (including the year of its release) that included realistic depiction of professional basketball players, including with the tattoos that they bear in real life.

**FIRST AMENDED RESPONSE TO INTERROGATORY NO. 3:**

Take-Two incorporates by reference the above-stated General Objections as if fully set forth herein. Take-Two objects to this Interrogatory as overly broad and irrelevant to the extent that it seeks information regarding video games and tattoos that are not at issue in this Litigation. Take-Two objects to this Interrogatory to the extent that it calls for confidential information, trade secrets, or proprietary business information. Take-Two will provide such information subject to a Protective Order issued by the Court governing the parties to this Litigation. Take-

Two objects to this Interrogatory to the extent that it is compound and contains at least two subparts, each of which constitutes a separate interrogatory pursuant to Federal Rule of Civil Procedure 33(a)(1). Take-Two objects to this Interrogatory to the extent that it seeks information that is or will be in the possession of Plaintiff by referring to documents, taking depositions, or any other means of obtaining discovery in this Litigation that is more convenient, efficient, practical, and less burdensome.

Subject to, as limited by, and without waiver of the foregoing objections, Take-Two responds as follows: The first *NBA 2K* video game at issue that realistically depicted professional basketball players with the tattoos they bear in real life is *NBA 2K16*, which was released in 2015. Based on Take-Two's investigation, the first *NBA 2K* video game that realistically depicted professional basketball players with the tattoos they bear in real life is *NBA 2K2*, which was released in 2001. Take-Two's discovery efforts in this Litigation are ongoing, and Take-Two reserves the right to modify and/or supplement this response in light of facts learned during discovery.

**INTERROGATORY NO. 4:**

Identify each game published by You or that You plan to publish that depicts any of Hayden's Registered Works and, for each such game, identify the Hayden Registered Work(s) depicted therein.

**SECOND AMENDED RESPONSE TO INTERROGATORY NO. 4:**

Take-Two incorporates by reference the above-stated General Objections as if fully set forth herein. Take-Two objects to this Interrogatory to the extent the term "You" is overly broad as indicated in General Objection No. 11. Take-Two further objects to this Interrogatory to the extent the term "Hayden's Registered Works" is vague, ambiguous, and misleading as indicated in General Objection No. 12. Take-Two objects to this Interrogatory as overly broad and

Take-Two's copying was reasonable in light of its purpose of depicting real life accurately.

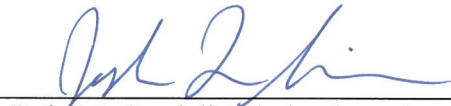
Fourth, Take-Two has not harmed the market for the NBA Players' Tattoos.

Take-Two's use is authorized, Plaintiff consented to such use, and Plaintiff has waived and is estopped from asserting copyright infringement. Take-Two incorporates by reference its response to Plaintiff's Interrogatory No. 12.

Plaintiff committed fraud on the Copyright Office by failing to disclose that one or more of the Tattoos was created based on a pre-existing work, to which Plaintiff holds no rights.

Take-Two's discovery efforts in this Litigation are ongoing, and Take-Two reserves the right to modify and/or supplement this response in light of facts learned during discovery.

Dated: October 31, 2019



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